

## CIVIL SERVICE COMMISSION MINUTES

December 5, 2001

A Regular Meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Mary Gwen Brummitt  
Gordon Austin  
Barry I. Newman  
Sigrid Pate

Absent was:

Roy Dixon

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES  
December 5, 2001

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
4 5 6 11 12	8		

COMMENTS Motion by Newman to approve all items not held for discussion; seconded by Austin. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda**

- A. Commissioner Brummitt: Richard Pinckard, Esq. on behalf of **Marco Carreon**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.
- B. Commissioner Dixon: **Garry Talbot**, Deputy Sheriff-Detentions, appealing an Order of Suspension and Charges from the Sheriff's Department.
- C. Commissioner Brummitt: Richard Pinckard, Esq., on behalf of **David Schultz**, Deputy Sheriff, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

**REGULAR AGENDA**  
**County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

**MINUTES**

1. Approval of the Minutes of the regular meeting of November 7, 2001.  
**Approved.**

**CONFIRMATION OF ASSIGNMENTS**

2. Commissioner Dixon: Stewart Kocivar, S.E.I.U. Local 535, on behalf of **Robert Saenz**, Protective Services Worker II, appealing an Order of Reduction in Compensation and Charges from the Health and Human Services Agency (HHSA).  
**Confirmed.**

3. Commissioner Brummitt: **Gilbert Valero**, former Eligibility Supervisor, appealing an Order of Removal and Charges from the HHSA.

**Confirmed.**

## **DISCIPLINES**

### **Findings**

4. Commissioner Brummitt: Richard Pinckard, Esq. on behalf of **Marco Carreon**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

### **FINDINGS AND RECOMMENDATIONS:**

Employee was charged with Cause I - Negligence which resulted in damage to public property; Cause II - Inefficiency; and Cause III - Acts incompatible with and/or inimical to the public service. Employee has been employed by the Sheriff's Department for approximately 7½ years. He has spent the last 4 years as a patrol deputy. Performance appraisals have contained overall ratings of "standard", with some category rating of "above-standard". His only individual category ratings which were at a level below the "standard" rating were in "equipment operation". Employee has also received approximately 14 commendations regarding various incidents of exemplary performance. Employee has an extensive record of prior discipline relating to vehicular incidents in which he was involved. While these vehicular incidents all involved minor property damage and no injuries, they are notable for their frequency in a relatively short period of time. He has received incrementally progressive discipline beginning with verbal counseling and extending through a five-day suspension for six incidents. The Department chose termination as the level of discipline, noting the rate and pattern of these incidents, and the fact that Employee has been provided substantial training regarding vehicular operation.

In June of 2000, Employee and another Deputy were responding to a dispatch regarding a hot stop while operating under Code 3. While operating in Code 3 status, emergency vehicles are not subject to the normal Vehicle Code driving rules, however the vehicles must be driven with "due regard for the safety of all persons using the highway." While responding to the hot stop dispatch, Employee heard of the need for traffic control from patrol units at the scene. The other Deputy had specialized training and the possession of a non-lethal shotgun. In proceeding to the hot stop scene, Employee and the Deputy first made visual contact with each other as they were coming from opposite directions. Employee was in the lead. As he and the Deputy proceeded in Code 3 status and neared the hot stop scene, they encountered a civilian vehicle in their lane which was slowing or stopped to yield to their emergency vehicles. Employee passed the vehicle to its left; the Deputy passed to its right. Immediately after passing the civilian vehicle, Employee turned his vehicle to the right across the number two and three lanes at a nearly perpendicular angle. His purpose was to block civilian traffic. The Deputy, seeing Employee's car appear in his lane, forcefully applied his brakes. The Deputy skidded and collided with Employee. The damage to the vehicles being moderate, both deputies proceeded to the hot stop.

Initially, the collision was investigated by Deputies Clem and MacDonald. They concluded that the collision was the result of an unsafe turning maneuver by Employee and was caused by a violation of the Vehicle Code relating to unsafe lane changes. It was noted in cross-examination that the other Deputy shared in the culpability for the

collision. Corporal Manos of the Vista Sheriff's Department became concerned with the conclusion of Deputies Clem and MacDonald and suggested that a particular County accident investigator and reconstructionist be contacted. This accident investigator, Mr. Phillips, had substantially more equipment, experience, and training than the Department's accident investigators and is himself a former law enforcement officer. He was initially engaged to broaden the scope of the investigation to include more of the events leading up to the collision and to produce a computerized model of the incident. Mr. Phillips was asked by Corporal Manos and the Vista station Traffic Sergeant to "perform an analysis of the collision to include the causative factors of this collision, including whether other courses of action for either of the involved deputies would be more appropriate." At the Commission hearing Mr. Phillips opined that Employee was not at fault and had acted reasonably. In contrast, Mr. Phillips opined that the other Deputy was at fault in the collision.

The scope and quality of the investigations of Deputies Clem and MacDonald and Mr. Phillips were substantially different. Mr. Phillips' investigation was broader and more in-depth and the Hearing Officer was influenced by the relatively higher quality of the investigation by Mr. Phillips. The weight of the testimony presented at the Commission hearing indicated that Employee's chosen method of traffic control was appropriate. The Department failed by a preponderance of evidence to prove that Employee was to blame for the collision. It is therefore ordered that the Order of Termination be modified to a ten day suspension without pay (Employee did not attempt to gain Code 3 approval); that Employee be awarded back pay, benefits and interest from the date of termination until the date he is returned to work, minus the ten day suspension and any wages he received from outside employment; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

**Motion by Brummitt to approve Findings and Recommendations; seconded by Pate. Carried.**

5. Commissioner Dixon: **Garry Talbot**, Deputy Sheriff-Detentions, appealing an Order of Suspension and Charges from the Sheriff's Department.

#### FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Inefficiency (left assigned position without being properly relieved, and went to lunch); Cause II - Inefficiency (left post without being properly relieved to smoke a cigarette); and Cause III - Acts which are incompatible with and/or inimical to the public service. Employee has been a Deputy in the Department's correctional facilities for over 24 years and is but one of a few deputies who have remained assigned exclusively to Department correctional facilities over a lengthy period of time. Moreover, he has served more than twice as much time in correctional facilities as any other deputy. In 1999, Employee received a 5-day suspension as a result of similar charges. There was a Department standing order that all detention facility medical units were required to have at least one deputy on duty at all times as the result of a prior incident in which a nurse was taken hostage by an inmate. At the Commission hearing Employee admitted the facts of Cause I and did not contest the charges thereunder. Rather, he contested the level of discipline as being too severe. He directed the Commission's attention to his many years of service to the Department in correctional facilities and to the stressful nature of correctional facility employment. He also pointed to the lack of actual detriment caused by his conduct.

At the hearing, the Department introduced the testimony of Deputy Hawley, the Department's only percipient witness. Deputy Hawley testified that the unit was short-staffed that day (May 18, 2001) and that he told Employee that he was taking a fifteen to twenty minute lunch break; that he requested Employee remain stationed in the Unit while he was on lunch and thereafter Employee could take lunch. Shortly after arriving in the lunch area he learned that Employee also went on a lunch break. Deputy Hawley was forced to interrupt his lunch to return to the Unit so that there would be at least one deputy there.

Deputy Hawley had previously spoken to Employee about the standing order requiring uninterrupted staffing of the Medical Housing Unit. With regard to cigarette breaks, Deputy Hawley testified that the Captain of the Vista Detention Facility had relaxed the general smoking policy to allow deputies to take smoking breaks as long as it did not interfere with their duties. Employee admitted to taking smoking breaks and testified that these breaks occurred after he returned inmates to their cells and that he did not leave medical staff alone with inmates during his breaks.

By Employee's own admission, the Department proved the Charges under Cause I. The Hearing Officer found that Employee's behavior displayed disregard, even disdain, for the Department's standing order that the unit remain attended by at least one deputy at all times. The imposition requested of Employee was minor as he needed to have waited fifteen to twenty minutes to be relieved for his own lunch break. The Hearing Officer found that Employee put his own convenience over the important security and safety needs of the detention facility's Medical Housing Unit. The Department failed to prove Cause II in that Employee did nothing different from the practice approved by the Vista Detention Facility's Captain regarding cigarette breaks.

In light of Employee's prior discipline, the Department's chosen level of discipline is appropriate. Employee is guilty of Causes I and III. Employee is not guilty of Cause II. It is therefore ordered that the Order of Suspension be affirmed, that the proposed decision shall become effective upon the date of approval by the Civil Service Commission, and that the Commission approve and file this report.

**Motion by Newman to approve Findings and Recommendations; seconded by Pate. Carried.**

6. Commissioner Brummitt: Richard Pinckard, Esq., on behalf of **David Schultz**, Deputy Sheriff, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

#### FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Conduct Unbecoming an officer of the County of San Diego (inappropriate language, mannerisms and demeanor); Cause II - Inefficiency (failure to log incident in Patrol Log); Cause III - Acts which are incompatible with and/or inimical to the public service.

Employee has been a Deputy Sheriff employed by the Department for approximately 13 years. The Order of Pay Step Reduction and Charges sets forth one prior incident of discipline for violation of rules pertaining to unbecoming conduct and courtesy for which he received a 3-day suspension. Although the Department has failed to provide Employee with a performance appraisal report since his June 29, 1998-99 rating period, his last 5 appraisal reports contained overall ratings of "above

standard", and he has received several commendations and awards. (In addition to the Department's failure to provide timely performance appraisal reports, it took approximately 1 year and 4 months from the time of the underlying alleged misconduct to produce the subject Order of Pay Step Reduction and Charges.) The original disciplinary recommendation was for a ten (10) working-day suspension, but was reduced to a pay step reduction equivalent to a six (6) working-day suspension upon the recommendation of the Skelly hearing officer.

The incident underlying this discipline was an episode in which uniformed patrol officers happened upon an undercover law enforcement operation, believing they had encountered criminal activity. Due to the sensitive nature of law enforcement undercover operations identities will be referred to as Sergeant X and Deputy Y.

Employee and his partner were involved in a project that involved towing unregistered, stolen or abandoned vehicles in an area notorious for its high crime and gang-related activity. Although the facts of the incident are in dispute, testimony presented at the Commission hearing appeared to constitute the most likely representation of events: Employee and his partner checked the license plate and vehicle identification number information of a vehicle and the computer indicated that the registration of this particular vehicle was "not on file." The Deputies believed this vehicle was in violation of registration requirements, or possibly stolen. Sergeant X and Deputy Y were located in a ground floor apartment near the subject vehicle. They were participating in a joint task-force undercover operation involving several law enforcement agencies. The vehicle was the responsibility of Sergeant X and was "not on file" because of his undercover status. What ensued between Employee, his partner and Sergeant X was an exchange of profanities, Employee drawing his weapon, and an attempt to arrest Sergeant X. Deputy Y exited the apartment whereon Employee's partner recognized him as a police officer and urged Employee to release Sergeant X. After releasing Sergeant X and returning his knife to him (which had been dropped at the order of Employee), Sergeant X was livid and used profanity in communicating with Employee, who responded in kind.

At the hearing, Employee, his partner and Sergeant X testified that they experienced a great amount of fear of the other during the incident. The patrol system command indicated that the incident would be viewed as a "training issue". However, Sergeant X filed a formal complaint against Employee that was investigated by Internal Affairs.

Testimony from the tow truck driver who had accompanied Employee placed the blame for the incident squarely on Sergeant X and his refusal to comply with the uniformed officers' requests and commands. His testimony also indicated that Sergeant X was the first to display anger, belligerence and profanity. Nearly every law enforcement officer who testified at the hearing stated that undercover officers must comply with the requests and commands of uniformed officers who are unaware of their true identity. It was reasonable for Employee and his partner to be concerned that they were encountering a criminal who was calling for reinforcement. Rather than Employee placing the undercover operation at risk, it was clear that all risk was created by Sergeant X. If he had simply complied with the reasonable requests of Employee and his partner, he could have quickly and privately revealed his law enforcement identity. Instead, he drew attention to the incident, created a volatile situation and potentially exposed the undercover operation. It was abundantly evident that Sergeant X should have been the primary subject of discipline as a result of the February 11, 2000 incident. He displayed exceedingly poor judgment and was discourteous.

The Hearing Officer noted that the Department was untimely in both its performance evaluations and discipline of Employee. The Department's laches in this regard has undermined the fairness of the process, resulting in fading memories. Nevertheless, the evidence did demonstrate some misconduct on the part of Employee. He has displayed angry tendencies in the past and has been disciplined for such behavior. Despite Sergeant X's discourteous and unprofessional conduct, Employee should not have succumbed to similar conduct. He lost control and lowered himself to the level of Sergeant X. Employee is guilty of Cause I and Cause III. Employee is not guilty of Cause II. It is therefore recommended that the Order of Pay Step Reduction and Charges be modified from a reduction in pay for a period equivalent to six (6) working days (51.0 hours) to a reduction in pay for a period equivalent to three (3) working days (25.5 hours); that Employee be awarded back pay and benefits for any pay step reduction already imposed equivalent to three (3) working days (25.5 hours), plus interest; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

### Discussion

Commissioner Newman addressed the forum regarding the failure of the Department to provide timely performance appraisals and requested that this matter be "spotlighted" in these Minutes. He explained that lack of proper supervisorial documentation continues to be a source of concern to the Commission and often impacts on a fair hearing process.

**Motion by Brummitt to approve Findings and Recommendations; seconded by Pate. Carried.**

## **DISCRIMINATION**

### **Complaints**

7. **Amanda Greene**, Intermediate Clerk Typist, Sheriff's Department, alleging non-job related factor discrimination by the Probation and Sheriff's Departments. (See No. 8 below.)

RECOMMENDATION: Deny request. Appellant is not clear as to the type of alleged discrimination.

**Staff recommendation approved.**

## **SELECTION PROCESS**

### **Complaints**

8. **Amanda Greene**, Intermediate Clerk Typist, Sheriff's Department, appealing her non-selection by the Probation and Sheriff's Departments for various classifications as the result of background checks and alleged inappropriate information provided by the Sheriff's Department to prospective employers. (See No. 7 above.)

RECOMMENDATION: Continue to the next meeting in order to allow time for the Departments to submit responses.

**Staff recommendation approved. Continued.**

9. **Johnny D. Moore**, Residential Care Worker II, HHSA, appealing his non-selection for the classification of Deputy Probation Officer by the Probation Department.

RECOMMENDATION: Deny request.

**Staff recommendation approved.**

### **Findings**

10. **Paul J. Carter**, appeal of removal of his name by the Department of Human Resources from the employment list for Correctional Deputy Probation Officer I.

RECOMMENDATION: Ratify item No. 10. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Item No. 10 ratified.**

### **RECONSIDERATION**

11. **Alvin Williams**, Housing Specialist I, and **Michael Rossler**, former Housing Specialist I, requesting reconsideration of the Commission's March 7, 2001 decision regarding their selection process complaints against the Department of Housing and Community Development. (Continued from the April 4<sup>th</sup>, June 6<sup>th</sup> and September 5<sup>th</sup>, 2001 Commission meetings.)

RECOMMENDATION: Deny requests.

Commissioner Austin requested clarification regarding the review that was conducted by the Commission regarding a fair selection process. Larry Cook, Executive Officer, responded and conveyed the status of the review, including the fact that the Department has had a change in administration and is aware of the Commission's concerns regarding this matter. He further explained that he has had conversations with the past interim director, Mikel Haas and is confident the Commission's view has been communicated to the new management team. (In the interim Mr. Rossler was terminated from County employment.)

**Motion by Newman to accept staff recommendation; seconded by Pate. Carried.**

<b>Ayes:</b>	<b>Brummitt, Newman Pate</b>
<b>Noes:</b>	<b>--</b>
<b>Abstentions:</b>	<b>Austin</b>
<b>Absent:</b>	<b>Dixon</b>

### **OTHER MATTERS**

#### **Seal Performance Appraisal**

12. Richard Pinckard, Esq., on behalf of **James Pitts**, Deputy District Attorney IV, requesting the sealing of a Performance Appraisal for the period June 9, 2000 to June 9, 2001. (Continued from the November 7<sup>th</sup>, 2001 Commission meeting.)

RECOMMENDATION: Assign a Commissioner to conduct an investigation under Rule V, section 5.1.7.

Anthony Albers, Sr. Deputy County Counsel addressed the Commission on behalf of the Department. He emphasized that the main issue in this matter is the request to seal the performance appraisal of June 9, 2000 to June 9, 2001, which he contends was issued properly. Mr. Albers



stated that past performance appraisals should not be at issue at this time. He asked the Commission to consider what remedy would be taken if it voted to conduct an investigation in this matter.

Larry Cook, Executive Officer, stated that the DA's response was very thorough, and that by conducting an investigation, no new significant information would likely be brought out.

Commissioner Newman expressed concern about whether Employee was informed about his work prior to receiving his performance appraisal.

The Commission pointed out that this Department has been lax in its issuance of performance appraisals, however, it determined that an investigation is not warranted at this time.

**Motion by Austin to deny an investigation under Rule V; `seconded by Pate. Carried.**

<b>Ayes:</b>	<b>Brummitt, Austin, Pate</b>
<b>Noes:</b>	<b>Newman</b>
<b>Abstentions:</b>	<b>--</b>
<b>Absent:</b>	<b>Dixon</b>

#### **Extension of Temporary Appointments**

13. Department of Animal Control

2 Animal Control Officer Trainees (David Battle, Roxanna Galeano)

14. Auditor & Controller

1 Section Chief, Revenue & Recovery (Patricia Tusler)

15. Health and Human Services Agency

1 Emergency Medical Services Specialist (Steven Leapley)

16. Department of Parks and Recreation

1 Departmental Personnel Officer II (Karen Walsh)

RECOMMENDATION: Ratify Item Nos. 13-16.

**Item Nos. 13-16 ratified.**

17. Public Input.

ADJOURNMENT: 4:45 p.m.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE JANUARY 16, 2002.**